

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 12

ADT SECURITY SERVICES, INC.¹

Employer and Case 12-RC-9363 TEAMSTERS, LOCAL UNION NO. 769, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

ADT Security Services, Inc. (the Employer), a Delaware corporation, with facilities located throughout the United States, including its facilities in Pompano Beach, West Palm Beach and Port St. Lucie, Florida, is engaged in the sales, installation and service of commercial, small business and residential security systems. On April 15, 2009, Teamsters, Local Union No. 769 (the Petitioner) filed a petition with the National Labor Relations Board, under Section 9(c) of the National Labor Relations Act, to represent certain employees employed by the Employer. On April 29, 2009, a hearing officer of the Board held a hearing in this case.

The Petitioner contends that the petitioned-for single facility bargaining unit of commercial and residential installation and service technician employees employed at the Employer's Pompano Beach, Florida facility is presumptively appropriate. The Employer argues that the only appropriate bargaining unit is a multi-site facility bargaining unit, consisting of commercial and residential installation and service

¹ The Employer's name appears as amended at the hearing.

technician employees employed at its facilities in Pompano Beach, West Palm Beach and Port St. Lucie, Florida. In addition, the Employer asserts that employees employed in the job classifications of drafter, installation field services coordinator (commonly referred to as project coordinator) and field support specialist should be included in the appropriate bargaining unit because they share a sufficient community of interest with the petitioned-for bargaining unit employees.

There are approximately 105 to **110** employees in the bargaining unit sought by the Petitioner. There are approximately 175 to 180 employees in the bargaining unit the Employer contends is appropriate.

The Employer and the Petitioner stipulated that there is no bargaining history between them. The parties also stipulated that there are no pending petitions in other NLRB Regional offices involving other Employer facilities.

A hearing officer of the Board conducted a hearing and both parties submitted timely post-hearing briefs. I have considered the evidence and arguments presented by the parties. As explained below, I conclude that the single facility unit that the Petitioner seeks to represent is an appropriate unit. In this regard, the Employer has not rebutted the presumption that a single facility unit is appropriate. I further conclude that the employees in the job classifications the Employer seeks to add to the unit do not share a community of interest with the employees in the petitioned-for unit. Accordingly, I shall direct an election in the single-site unit sought by the Petitioner and exclude from the unit the job classifications of drafter, installation field services coordinator (project coordinator) and field support specialist. After setting forth the relevant facts, I shall apply the controlling Board principles.

FACTS

The Employer's Operations

The Employer operates approximately 175 sales and service offices (SSO's) throughout the United States and Canada. Approximately 100 to 110 SSO's are located in the United States. The Employer has a headquarters office in Boca Raton, Florida.

The Employer has SSO's in Jacksonville, Tallahassee, Crestview, Gainesville, Tampa, Orlando, Melbourne, West Palm Beach/Port St. Lucie and Pompano Beach, Florida, and sales offices in Miami and Miramar, Florida. None of the employees working in the Employer's facilities in Florida are represented by labor organizations and there is no history of collective bargaining at the Employer's Florida facilities.

The Employer's business is organized into geographical zones. The Employer's Florida facilities are located in its southeast region, which also encompasses its facilities for the following locations: Washington, D.C., the States of Maryland, Virginia, Kentucky, Tennessee, Arkansas, Louisiana, and all states between those states and Florida. Each of the Employer's regions is divided into areas. Each of the Employer's areas is divided into districts and the districts are divided further into towns. At the employee level, the Employer uses town codes which identify each individual SSO. The town codes are used to account for expenditures and human resources personnel. There is no organization chart or any other document in evidence that describes the Employer's administrative organization and the record does not otherwise define the boundaries or extent of the areas, districts, or towns within the Employer's southeast region. The record does not reflect whether the Pompano Beach, West Palm Beach and

Port St. Lucie facilities constitute a separate administrative area or district, or other separate administrative unit of the Employer.

The Employer's Management and Supervisory Structure

The Employer's organizational structure contains four channels (the Employer's term for departments) consisting of: 1) high volume (residential and small business) installation; 2) commercial installation; 3) service and operations; and 4) sales. The Employer's first line of supervision in each channel is the team manager. In October 2008, the Employer changed its organizational structure so that the team managers in a particular channel report directly to an area manager dedicated to that channel and the area managers in turn report to a regional director for that channel. The area managers have responsibilities for multiple sites.² The parties stipulated that the Employer's team managers and area managers are supervisors within the meaning of Section 2(11) of the Act.

As indicated above, this case involves the SSO's in Pompano Beach and West Palm Beach, Florida, and the satellite facility in Port St. Lucie, Florida, which is considered part of the West Palm Beach SSO. Unless otherwise noted, references herein to the West Palm Beach facility include the Port St. Lucie satellite. The Pompano Beach SSO is the southernmost of those three facilities, and is located in Broward County, approximately 37 miles south of the West Palm Beach SSO. The Port St. Lucie satellite facility is approximately 55 miles north of the West Palm Beach facility and approximately 92 miles north of the Pompano Beach facility. All three of the facilities are

² Until October 2008, all team managers at a particular facility for the high volume installation, commercial installation, and service and operations channels reported to the facility branch manager for that facility, and the branch managers in turn reported to an area manager with multi-site responsibilities. It appears from the record that the Employer no longer employs branch managers.

located near the 1-95 interstate highway and the Florida Turnpike, both of which run north-south along Florida's Atlantic coast.

Employees at the Pompano Beach SSO are assigned to work in Monroe, MiamiDade and Broward counties, all of which are south of Palm Beach County, where West Palm Beach is located. The record does not reflect the extent of the geographical jurisdiction of the employees assigned to work at the West Palm Beach and Port St. Lucie facilities. However, those employees usually work in the area north of Broward County. All employee work assignments are tracked by work site, with specific town code numbers used to account for work performed within the jurisdiction of the particular Employer facility. The Employer assigns each county a specific code for payroll purposes.

At the Pompano Beach SSO, the Employer employs approximately 105 to 110 installation and service technicians. At the West Palm Beach and Port St. Lucie locations, the Employer employs a combined total of approximately 63 installation and service technicians. Overall, the Employer employs more service technicians than installation technicians, but the record does not specify the numbers of employees in each of those job classifications. The installation technicians work in either the high volume installation channel or the commercial installation channel. The high volume installation technicians report to a high volume installation team manager, while the commercial installation technicians report to a commercial installation team manager. The service technicians work in the service and operations channel, which has two first line supervisory positions. The service technicians report to a service team manager, while the operations support (administrative) employees report to the operations support team manager.³

At the Pompano Beach SSO, there are three high volume installation team managers and two commercial installation team managers. The record does not reflect how many service team managers work at Pompano Beach.

Mark Ricciardi, the operations support team manager for both the West Palm Beach and Port St. Lucie facilities since April 1, 2009, is responsible for the support employees and service technicians at West Palm Beach and Port St. Lucie.⁴ There are also one service team manager, one commercial installation team manager, and one high volume installation team manager at West Palm Beach, and one team manager in Port St. Lucie who is responsible for both the high volume installation channel and the service channel.

At least one of the team managers at the West Palm Beach facility speaks to his counterpart at the Pompano Beach facility daily during team manager telephone conference calls.

Each team manager supervises and directs only those employees assigned to his/her work location. The team managers issue discipline, review work schedules, conduct employee evaluations, determine amounts of employee wage increases, schedule vacations, handle sick leave requests and approve weekly work sheets submitted by employees for payroll purposes. The record does not reflect the extent of a

³ At the Pompano Beach SSO, there are approximately 19 to 23 operations support (administrative) employees. There are approximately 12 to 15 employees in that job classification at the West Palm Beach SSO. Those employees are supervised by operations support team managers assigned to their respective locations. Neither party contends that the operations support employees should be included in any unit found appropriate. As described below, one of the two current operations support team managers for West Palm Beach and Port St. Lucie, Mark Ricciardi, also supervises employees in other job classifications at those locations. ⁴ Ricciardi testified that the Employer is searching for a new team manager for the service channel at West Palm Beach and Port St. Lucie, and that he will no longer be responsible for that channel after such a hire is made.

team manager's authority concerning interviewing employment applicants, hiring, firing, promoting, laying-off or recalling employees.

Each channel has an area manager, who directly supervises team managers for that channel at all three locations involved herein. The area manager conducts a daily telephone conference meeting with his/her team managers from these three locations. The record does not reflect whether the area managers who are currently responsible for the Pompano Beach, West Palm Beach and Port St. Lucie locations have responsibility for any other Employer facilities. Six area managers of high volume installations report directly to Greg Daly, regional director of the Employer's southeast region for high volume installations.⁵ Daly's office is located at the Boca Raton, Florida headquarters.

The Degree of Centralized Labor Relations and Common Wages and Benefits

Theresa Maia is the Employer's human resources manager with responsibilities for all of the Employer's facilities in Florida. She testified that the Employer compensates all employees in Florida, including the installation and service technicians at the Pompano Beach, West Palm Beach and Port St. Lucie locations, using the same wage system. The Employer allots each facility a percent of payroll that may be used for employee wage raises at that facility. For 2008, the Pompano Beach and West Palm Beach facilities each were allocated three percent of payroll for merit wage increases, which could be granted to employees by team managers as they deemed appropriate.

⁵ In the four years preceding October 2008, when Greg Daly became the Employer's regional director of the southeast region for high volume installation, he was the Employer's area general manager, with responsibility for its operations in the southern half of Florida for the first two years, and responsibility for its operations throughout the State of Florida for the next two years.

In addition, employee benefits such as health, life, dental and long-term disability insurance, as well as a 401 (k) retirement pension plan are uniform throughout Florida. Both supervisory and rank and file employees participate in the same benefits program. The Employer also has work rules, policies and an employee handbook applicable to employees at all of its Florida facilities.

Maia testified that, although her office is located at the West Palm Beach facility, she spends an equal amount of time at the West Palm Beach and Pompano Beach facilities.⁶ As the human resources manager, Maia approves the number of employees to be hired at all Florida facilities, but is not involved in the interviewing of rank and file employees. The team manager and area manager complete service requisitions when seeking to hire employees, which are approved by the human resources director and the business unit leader.⁷ Maia is also involved in the disciplinary process from beginning to end with the team manager and human resources director. However, the record does not specify the exact nature or extent of Maia's involvement in the disciplinary process. Greg Daly, regional director of the southeast region for high volume installation, also reviews discipline issued to installation and service technicians. However, the record does not specify the extent or purpose of Daly's review of discipline. The Employer has no first-line human resources manager who reports to Maia.

6 Until almost a year before the hearing in this matter, which was held on April 29, 2009, Maia's office was located at the Pompano Beach SSO. At about that time there was a fire at the Employer's Miami SSO and the Employer closed the Miami SSO and consolidated its Miami operations into its Pompano Beach facility. It appears that the consolidation created a shortage of space at Pompano Beach, and Maia voluntarily transferred to West Palm Beach to alleviate that shortage.

7 The record does not reflect the duties, responsibilities or office location of the human resources director or the business unit leader.

Installation and Service Technicians

Installation and service technicians work in the field at the customers' residences and places of business, where they install and service the Employer's security systems. They do not have offices or cubicles. The record does not reflect the level of training possessed by installation and service technicians. They are not required to possess an undergraduate college degree. Installation technicians and service technicians possess very similar skills. Service technicians transfer between the service and installation departments as part of their career development. In addition, some installation technicians regularly perform service technician work. For example, one of the Employer's customers, the Dade County public school district, prefers that installers perform its service work. In addition, there are times that the Employer's service department does not have enough personnel and the installation department lends it some installers to perform service work.

Installation and service technicians at the Pompano Beach, West Palm Beach and Port St. Lucie facilities wear identical uniforms and are all assigned a company vehicle. They are paid on an hourly basis in the range of \$16 to \$22 per hour. They do not use a time clock, but instead submit weekly work sheets to their team managers in order for the Employer to keep track of their jobs and hours worked for payroll purposes.

The installation technicians receive work assignments from their respective team managers. The service technicians receive work assignments either from the Employer's central dispatch office in Rochester, New York or through the local office team manager for their assigned facility. The assignments that the service technicians receive from the Employer's central dispatch office are given either by telephone or via computer. The service team manager for a facility can reallocate the work assignments for that facility, if necessary. Installation and service technicians (and operations support employees) report to the same area manager for their respective channels. However, neither the extent of such reporting directly to the area manager or the reason for it is clear from the record.

In each facility the team managers distribute work assignments to technicians in a "tech area" located near the warehouse where the technicians pick up the parts they need for their jobs. Telephones are available in the tech area so the technicians can call the customers to which they are assigned before leaving the facility.

Drafters. Project Coordinators and Field Support Specialists

The Employer contends that the job classifications of drafter, installation field services coordinator (commonly known as project coordinator) and field support specialist should be included in any unit found appropriate. At the Pompano Beach SSO there are two drafters, one project coordinator and two field support specialists.⁸ At West Palm Beach there is one employee in each of these three job classifications. Thus, there are a total of eight employees in these disputed job classifications. The employees in these classifications are under the direct supervision of the commercial installation team managers at their respective assigned facilities.

Drafters are paid on an hourly basis at a wage rate of approximately \$17 to \$22 per hour. Project coordinators are paid on an hourly basis at a wage rate of approximately \$17 to \$20 per hour. Field support specialists are paid on a salary basis in the range of \$40,000 to \$55,000 per year.

⁸ One of the two drafters supervised by the commercial installation team manager for the Pompano Beach facility works in the Employer's Miramar, Florida satellite sales office.

The Employer requires drafters, project coordinators and field support specialists to *have* an undergraduate college degree. *However*, it is not clear whether the employees in those job classifications actually possess such degrees. Unlike the installation and service technicians, the drafters, project coordinators and field support specialists do not wear uniforms and are not assigned company vehicles.

Drafters assist in the installation design of the security system and putting the design into a plan format to be *reviewed* by local authorities, such as city inspectors and compliance code officers. Drafters draw plans showing the lay-out of equipment, such as the parts model numbers, wire runs and power calculations. Drafters then submit the drawing to municipal officials in order to obtain proper permits. In carrying out their job duties, drafters meet with sales employees, customers and municipal inspectors. Drafters sometimes meet with installation technicians in order to *review* prints and plans. Such meetings may occur at the work site, but usually they occur in the office. Drafters assist in making sure the installation technician understands how to run wires, and understands the location, design and operations of the security system, as well as the end result desired by the customer *relative* to the use of the system. If the installation technician has questions about the drawing, changes need to be made to the drawing, or the installation fails inspection, then the installation technician calls the drafter for assistance. Drafters use computers to draw designs and are required to take computer assisted design or drawing (CAD) courses. Installation and service technicians, except for one installer who was formerly a drafter, *have* not had CAD training. Sometimes, an installer sketches a drawing in order for the drafter to use in creating a CAD design.

Drafters work in cubicles and have exclusive use of computers. The Employer issues Nextel telephones to both drafters and installation technicians, for the purpose of carrying out their job duties. The Employer does not issue Nextel telephones to service technicians. Drafters have frequent interaction with the project coordinator. Drafters and project coordinators attend meetings with commercial installation technicians. Drafters spend about 10 to 15 percent of their time in the field performing duties at the installation work sites.

Mark Ricciardi, operations support team manager at the West Palm Beach and Port St. Lucie locations, testified that drafters do not use a time clock. However, Antonio (Tony) Rodriguez, installation team manager at the Pompano Beach facility, testified that drafters use a time clock at that location in order for the Employer to keep track of their work hours.

One drafter assigned to the Pompano Beach SSO has had simultaneous responsibility for that location and for the West Palm Beach SSO at times when there has not been a drafter at the West Palm Beach facility. The drafter at Pompano Beach continues to have those responsibilities when the drafter assigned to West Palm Beach is on vacation.

Project coordinators spend approximately 70 percent of their work time on installation sites. They manage the commercial installations, performing on-site supervision of progress according to the timeline for the job. The Employer supplies each project coordinator with a computer laptop to carry out his/her work duties. The project coordinators are assigned to larger projects and interact with the customers and the Employer's drafters. Project coordinators perform some inspection work and sometimes assist installation technicians with installation duties. The record does not specify how much time project coordinators spend assisting installers with installation duties.

Field support specialists spend approximately 75 percent of their work time on commercial installation sites. They work primarily with national or regional account customers, such as J.C. Penney, and are very knowledgeable concerning the customers' needs. Field support specialists produce paperwork for the national account managers to sell the project and create the job. They are furnished a computer laptop to carry out their work duties. Field support specialists walk around the work site with the installation technicians during the initial meeting of the job and oversee the job until completion. If there are any issues concerning the acquisition of permits for the job, the installation technicians contact the field support specialist for assistance. It is also the responsibility of the field support specialist to make sure the job is designed correctly so the installer can complete it. Field support specialists interact with service technicians if a national account is referred back for service. One of the field support specialists was formerly a project coordinator and prior to that time worked as a technician. The record does not reflect how much time field support specialists spend engaging in common work duties or otherwise interacting with installation and service technicians. *Employee Interchange. Transfers and Interaction*

Under both the Employer's previous and current organizational structures, there has been some interchange and interaction between employees at its Pompano Beach, West Palm Beach and Port St. Lucie facilities, according to Greg Daly, regional director of the Employer's southeast region for high volume installation. Daly testified that the

current organizational structure lends itself to the sharing of resources (Le., swapping and transferring of employees) because area managers have responsibility and control over all three facilities and move employees from one location to another. Daly testified that during his four years as area general manager, with the exception of hurricane emergencies, the movement of additional Employer resources, predominantly consisting of manpower, to the Pompano Beach and Miami areas "could" occur as often as once a month, based on the demand for service. He testified that during the period when he was area general manager in the four years preceding October 2008 the Employer "quite frequently" interchanged resources, including employees, between and among its Port St. Lucie, West Palm Beach, Pompano Beach facilities and the now closed Miami facility, to meet service demands during storm (hurricane) season. However, with respect to the interchange of employees resulting from storms, there is no evidence defining the frequency with which this occurred, the number of employees transferred, the duration of the transfers, the names of any employees who were transferred, or the dates of any such transfers.

Daly also testified that the geographical proximity of the Pompano Beach, West Palm Beach and Port St. Lucie facilities makes it possible for the Employer to efficiently utilize resources by transferring employees between these offices without incurring the expense of extensive non-productive driving time, plus the cost of lodging and meals if the Employer was transferring employees between these offices and more distant locations, such as Tampa.

Daly also testified that recently he was involved in the planning of a conversion project in which the Employer reassigned some employees, primarily service

technicians, from its Pompano Beach, West Palm Beach and Port St. Lucie facilities to work on a project that was going on throughout the southeastern United States, including in the territories served by the three facilities involved in this proceeding. The record does not clearly reflect the locations from, and to, which technicians were reassigned for the conversion project. In addition, the record is silent with respect to the length of time of the reassignments, and with respect to the number and names of the reassigned employees.⁹.

Mark Ricciardi, operations support team manager for West Palm Beach and Port St. Lucie, testified that in approximately the past six months the Employer temporarily assigned a total of five service technicians and three commercial installation technicians, ¹⁰ two to three at a time in rotation, from West Palm Beach to Pompano Beach, for one or two weeks each, in order to assist with increased workload; and that the temporarily assigned technicians reported to the team manager at the Pompano Beach facility and used the Pompano Beach town code in order to report their work and time. The record does not establish whether any of these West Palm Beach technicians were assigned to Pompano Beach for more than one rotation, and does not establish the dates of these assignments. Pompano Beach installation team manager Antonio (Tony) Rodriguez testified that the Employer had temporarily transferred employees

⁹ Radios from the West Palm Beach facility were transported to Pompano Beach during the conversion project. The sharing of equipment between facilities is described herein in the section on the extent of functional integration of operations.

¹⁰ It appears from Ricciardi's testimony that the temporarily transferred employees were service technicians Rene Mendez, Jose Castillo, Greg Wing, Mike Louzy and Dallas Alton, and commercial installers Kevin Santiago and Alberto Flores. Based on Ricciardi's testimony, the Employer also contends that commercial installer Rick Ramsundar was temporarily transferred. However, Ricciardi testified only that Ramsundar was a commercial installer for West Palm Beach and had "done work" and there is no record evidence that Ramsundar was transferred.

from West Palm Beach to Pompano Beach for over a year, but only testified to the names of two such temporarily transferred employees.¹¹

Other than the above-described testimony of Ricciardi and Rodriguez, the record does not establish the names or number of employees who were temporarily transferred or reassigned, the time period over which such temporary interchange of employees occurred, or the number of times that the Employer has assigned installation and service technicians to work at another facility on a temporary basis even for a limited period. Notwithstanding regional director of the southeast region Daly's testimony that the Employer's work assignment records known as 524s, time tickets and payroll records all show each employee's work at specific locations, and therefore show instances of employee interchange, the Employer did not produce any records to substantiate its witnesses' testimony about employee interchange.¹²

There is also evidence that the Employer permanently transferred from 10 to 14 technicians among the Pompano Beach, West Palm Beach and Port St. Lucie facilities during approximately the four years preceding the change of its organization structure in October 2008. These transfers were all voluntary and based on the employees' request. Within the past six months, five employees permanently transferred either from West Palm Beach to Pompano Beach or vice versa. Three of the more recent permanent employee transfers were based on the Employer's work needs and the other two were based on the employees' requests.

¹¹ Rodriguez named Kevin Santiago and Alberto Flores, whose temporary transfers were also specified by team manager Ricciardi. ¹² An exhibit proffered by the Employer that purportedly summarized the temporary transfer of nine employees from West Palm Beach to Pompano Beach for two weeks was not received in evidence because the witness who testified concerning the document acknowledged that it was not based on any Employer records. (Section C of Employer Exhibit 1.)

The installation and service technicians at the Pompano Beach, West Palm Beach and Port St. Lucie facilities interact when equipment training sessions are conducted at a common location. An Employer official conducts the training, the location of which is based on the trainer's availability. Within the past three to six months, the Employer conducted three training sessions at the West Palm Beach facility concerning DMP, Focus 200 and Radionics product equipment. The Employer also recently conducted three training sessions at the Pompano Beach facility concerning Northern, Kantech and Panasonic equipment. Technicians from both the West Palm Beach and Pompano Beach facilities attended each of these training sessions. Team managers designate certain employees from their respective facilities to attend these training sessions based on the skills of the technicians. For example, two service technicians from Pompano Beach attended the DMP equipment training at West Palm Beach. The record does not otherwise specify how many employees participated in the six . equipment training sessions.

Michael Buttner, a service technician assigned to work at the Employer's Pompano Beach facility who has worked for the Employer for over 30 years in Monroe County, testified that he has never attended training sessions at the West Palm Beach or Port St. Lucie facilities. In addition, no drafters, project coordinators or field support specialists attended any of the equipment training sessions.

Michael Fry is a service technician assigned to work at the Employer's West Palm Beach facility. In addition to his regular service and inspection job duties, he schedules the inspections to be performed by both West Palm Beach and Pompano Beach technicians on a monthly basis and takes care of related paperwork. Fry also oversees the Underwriter's Laboratory (UL) certification process for certain fire alarm and burglar alarm installations in both the West Palm Beach SSO territory, and in Miami-Dade County and the municipality of Sunrise in Broward County, in the Pompano Beach SSO territory. In so doing, Fry interacts with the technicians assigned to the Pompano Beach facility who perform the UL inspections. The record does not reflect how often Fry interacts with technicians from Pompano Beach, and it is not clear whether he also coordinates UL inspections at facilities other than West Palm Beach and Pompano Beach.

Extent of Functional Integration of Operations

The Employer has parts warehouses at its Pompano Beach, West Palm Beach and Port St. Lucie facilities. The installation and service technicians go to their assigned facilities to obtain parts and equipment. However, when necessary, the Employer uses team managers to ferry parts between the three facilities. Thus, Ricciardi, the operations support team manager for the West Palm Beach and Port St. Lucie facilities, spends some time at the Pompano Beach facility, delivering parts from West Palm Beach or delivering parts to West Palm Beach. Each site has a separate inventory of its available parts that may be viewed remotely through an electronic system by individuals at other locations. Only managers can access that information.

Operations support team manager for the West Palm Beach and Port St. Lucie facilities Mike Ricciardi testified that prior to assuming that position on April 1, 2009, he had been the service team manager for those facilities since October 2007. As service team manager, Ricciardi conducted all work site inspections for the Pompano Beach and Miami facilities in addition to conducting work site inspections for the West Palm Beach facility. Ricciardi further testified that team manager Mayra Robson visited the West Palm Beach office from her Pompano Beach office about once per week for the entire day.

Based on operational demands, the Employer interchanges operations support (administrative) employees by moving them from one SSO facility to another in order to assist with paperwork backlog, inputting payroll or helping with the information technology system. The record does not reflect the number of operations support employees that the Employer has temporarily transferred over any specified period of time.

Bargaining History at Other Employer Facilities

Of the Employer's 100 to 110 SSO's in the United States, there are 61 where the Employer recognizes a labor organization as the representative of its employees. The employees at 18 of those 61 facilities are represented by various unions in single-site bargaining units. The employees at the remaining 43 of those 61 facilities are also represented by various unions and those 43 facilities are divided into 14 multi-site bargaining units covering employees working at from two to six facilities per bargaining unit.

The 14 multi-site bargaining units in the United States include a unit employed at the Employer's Pittsburgh and Altoona, Pennsylvania facilities that is represented by a local of the Teamsters other than the Petitioner. The Pittsburgh and Altoona facilities are approximately 100 miles and two hours of driving time apart. James Nixdorf, the Employer's director of labor relations for the United States and Canada, testified that the Teamsters local was certified as the bargaining agent of the Pittsburgh/Altoona unit in 1991 pursuant to an election. The record does not establish whether the Pittsburgh/Altoona unit was agreed to by the parties, or resulted from litigation regarding the unit scope.

The other multi-site units include a unit represented by Communications Workers of America (CWA) at facilities in Cleveland, Akron and Cincinnati, Ohio, a unit represented by CWA consisting of employees at six facilities in California, and a unit represented by International Brotherhood of Electrical Workers (IBEW) at facilities in Seattle and Tacoma, Washington. Although the record is not entirely clear as to which facilities are covered, it appears that Office and Professional Employees International Union (OPEIU) also represents the Employer's employees in a multi-site unit. IBEW and OPEIU each also represent employees of the Employer in single-site units. The record is silent as to whether or not the Teamsters or CWA also represent employees of the Employer in single-site units. There are no documents in evidence that pertain to the bargaining history at any of the existing units. Other than with respect to the Pittsburgh/Altoona unit there is no evidence as to the length of the bargaining relationships in any of the existing units.

ANALYSIS Scope of the

Unit -Single-Site or Multi-Site

A bargaining unit need not be the most appropriate unit under all of the circumstances; it must be only an appropriate unit. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991). With respect to the scope of the bargaining unit, it is well established that a single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Budget Rent a Car Systems, Inc.*, 337

NLRB 379 (2002). The burden of rebutting this presumption falls on the party arguing in *favor* of a multi-facility unit. Dattco. Inc., 338 NLRB 49 (2002); J&L Plate. Inc., 310

NLRB 429 (1993). To determine whether the single-facility presumption has been rebutted, the Board looks at such factors as: 1) the similarity of employee skills, functions and training; 2) the distance between the facilities; 3) the functional coordination in operations of the facilities; 4) common supervision; 5) central control *over* daily operations and labor relations, including extent of local autonomy; 6) contact between employees at different facilities; 7) employee interchange (particularly temporary transfers) between facilities; 8) common wages, benefits, and terms and conditions of employment; and 9) bargaining history, if any. New Britain Transportation Co., 330 NLRB 397 (1999).

In summary, the record shows that the team managers at the Pompano Beach facility retain substantial autonomy *over* day-to-day supervision, the degree of employee interchange and transfers is minimal, there is a considerable geographical distance between the facilities proposed by the Employer as a multi-site unit, there is no bargaining history involving the petitioned-for employees, and no labor organization seeks to represent the petitioned-for employees on a broader basis. In addition, there is insufficient evidence to establish that the unit proposed by the Employer is based on a distinct administrative unit into which the Employer is organized for business purposes. These factors outweigh evidence of centralized control *over* labor relations, the similarity of skills, job functions and working conditions, and the degree of operational integration. Although the latter factors arguably militate in *favor* of a multiple location unit, they are not so overwhelming as to cause the petitioned-for single-facility unit to *have* lost its separate identity. Accordingly, I find that the Employer has failed to rebut the presumption that the petitioned-for single-facility unit is appropriate.

I will now separately analyze each factor relevant to the determination of the unit scope.

Central Control Over Labor Relations

As stated above, the Employer compensates service technicians and installation technicians at all of its Florida facilities using the same wage system, allotting each facility a percentage of payroll for wage increases at that facility, and provides the same benefits such as health, life, dental and long term disability insurance and a 401 (k) retirement pension plan to all employees at its Florida facilities, including supervisors. The same employee handbook, work rules and policies also apply to all employees in Florida. Thus, the Employer's policies are not unique to the three facilities it seeks to include in a multi-site bargaining unit. On balance, this factor favors a finding of a multisite unit.

Local Autonomy

Although the Employer contends that its centralized control over personnel and labor relations policies require a finding that the Pompano Beach, West Palm Beach and Port St. Lucie facilities function as one unit, centralized control over labor relations policies, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. *New Britain Transportation Co.*, 330 NLRB 397 (1999). The Board considers "most relevant" whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems. For example, in *Renze's Market*, 238 NLRB 174, 175 (1978), despite centralization and similarity of employee skills, functions, and pay, the Board found a single-facility unit to be appropriate where immediate supervisors issued oral warnings, granted leave requests, and participated in hiring and discharge decisions. This level of involvement, according to the Board, is not routine but demonstrates meaningful local autonomy and participation in matters directly affecting employees' working lives. *Rental Uniform Service, Inc.*, 330 NLRB 334,335-336 (1999).

The team managers, admitted statutory supervisors, at the Employer's Pompano Beach facility, serve as front line management and exercise meaningful control over the working conditions of exclusively employees assigned to that facility. The Pompano Beach facility has approximately 105 to 110 installation and service technicians, five team managers who supervise the installation technicians, and an undisclosed number of team managers that supervise the service technicians. Accordingly, there are a substantial number of supervisors dedicated to supervision of the installation and service technicians at the Pompano Beach facility.

The Pompano Beach team managers issue discipline, review work schedules, assign work, conduct employee evaluations, determine amounts of employee wage increases, schedule vacations, handle sick leave requests and approve weekly work sheets submitted by employees for payroll purposes. In addition, when seeking to hire new employees, team managers complete and submit service requisitions. Although the Employer's human resources manager, area managers and regional directors for the service, high volume installation and commercial installation channels may review or approve these labor relations decisions made by the Pompano Beach team managers, there is no showing that the review or approval of these decisions is other than routine. Moreover, team managers decide which of their assigned employees will attend certain employee training sessions based on their assessment of the skills of the technicians. Although the record does not reflect the extent of the team managers' authority concerning hiring, firing, promoting, laying-off or recalling employees, the aforementioned undisputed authority exercised by team managers at Pompano Beach is sufficient to show that they possess significant local autonomy over important labor relations decisions that directly affect the work lives of the unit employees, and this evidence buttresses the presumption that a single-facility bargaining unit is appropriate.

To the extent questions exist concerning the authority of the team managers, I resolve any ambiguity in the record against the Employer, who has the burden of proving that the single-facility unit is inappropriate. See *Cargill, Inc.*, 336 NLRB 1114 (2001) (finding local autonomy based on separate supervisory staff); *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999) (finding local autonomy based on separate immediate supervision and separate day-to-day control over operations); *New Britain Transportation Co.*, 330 NLRB 397 (1999) (finding local autonomy where, among other facts, local dispatchers set schedules, approved time off and training conducted on a site by site basis).

In summary, this factor favors a finding that the petitioned-for single location unit is appropriate.

Operational Integration

The Employer argues that its operations at the Pompano Beach, West Palm Beach and Port St. Lucie facilities are functionally integrated. In this regard, there is evidence of daily telephone conferences with team managers at the respective facilities; daily telephone calls between at least one pair of counterpart team managers at Pompano Beach and West Palm Beach; the sharing of parts and inventory as needed; and the temporary transfer of operations support employees among the facilities.

However, the Pompano Beach and West Palm Beach/Port St. Lucie facilities each have their own warehouses, parts inventories, sales forces, administrative staffs, and team managers.

Although the degree of functional integration arguably militates toward finding that the presumption of a single-location unit has been overcome, that conclusion is questionable and in any event, this factor is outweighed by the other factors which favor a finding that a single-location unit is appropriate.

Employee Interchange. Permanent Transfers and Interaction

While the Employer's operations appear to exhibit a significant degree of operational integration, the above-detailed level of day-to-day employee interchange and permanent transfers between the service and installation technicians at the Pompano Beach facility and at the West Palm Beach/Port St. Lucie facility is not substantial, given the relatively high number of technicians assigned to Pompano Beach as compared to the relatively low number of employees interchanged and transferred over a substantial amount of time, and under both the old and new organizational structures. In this regard, although the Employer has occasionally interchanged a small number of unit employees between West Palm Beach and Pompano Beach, the evidence of employee interchange is minimal, unsubstantiated by any documentary evidence, despite the fact that the Employer undisputedly possesses payroll records and other records that would show any instances of employee interchange. See *Courier Dispatch*, 311 NLRB 728, 731 (1993) (finding that the employer failed to show sufficient employee interchange where exhibits were unclear as to "both the scope and frequency of temporary transfers and assignments" and did not allow for an "exact accounting of the total amount of work interchanged compared to the total amount of work performed"). Moreover, some of the testimony about employee interchange was vague and often appeared to be speculative rather than based on actual first-hand knowledge.

In summary, the Employer has failed to establish that day-to-day employee interchange of technicians involving the West Palm Beach facility occurs either regularly or in significant numbers, and it appears that such interchange as does exist is sporadic. See *Red Lobster*, 300 NLRB 908,911 (1990) (level of transfers not significant where 19 of 85 employees affected by temporary work assignments during one year); *Cargill, Inc.*, 336 NLRB 1114 (2001) (13 to 14 instances of interchange among 23 employees over an 8-month period did not demonstrate substantial interchange sufficient to overcome the single-facility presumption). Cf. *Dayton Transport Corp.*, 270 NLRB 1114 (1984) (single-facility presumption rebutted where, in one year, there were approximately 400 to 425 temporary employee interchanges between terminals among a work force of 87); *Trane*, 339 NLRB 866 (2003) (single-facility presumption rebutted where transfers between two facilities that were over 100 miles apart occurred "hundreds of times" a year among 20 employees).

The Board accords less weight to evidence of permanent transfers, *Red Lobster*, supra, and transfers made at the employee's request, *Renzetti's Market*, supra at 174 n. 8, than to day-to-day interchange of unit employees. See also *Lipman's*, 227 NLRB 1436, 1438 (1977) (voluntary, permanent interchange given less weight in unit determinations). The evidence of permanent transfers of technicians involving the Employer's Pompano Beach facility is insignificant, particularly in view of the relatively high number of technicians employed at Pompano Beach and the voluntary nature of the vast majority of permanent transfers that did occur. Thus, the transfers of 10 to 14 technicians among the Pompano Beach, West Palm Beach and Port St. Lucie facilities during the four years preceding October 2008, and the transfers of two technicians during the past six months were all voluntary and based on the employees' requests. There is only evidence of three permanent transfers of technicians involving the Pompano Beach facility that are based on the Employer's operational needs.

With respect to interaction, or contact, between the technicians and the facilities involved in this matter, the Employer cites the fact that a service technician (Michael Fry) schedules inspection duties to be performed by service technicians at the other two facilities and the six joint training sessions for technicians from the Pompano Beach, West Palm Beach and Port St. Lucie facilities. However, the extent of employee interaction cited is minimal, especially noting the fact that it appears that only a very small number of the technicians at these facilities has attended the joint training sessions.

In summary, these factors favor a finding that a single-site unit is appropriate.

Employee Skills, Functions and Working Conditions

The installation and service technicians at the Employer's Pompano Beach, West Palm Beach and Port St. Lucie facilities have essentially the same skills and functions and are subject to the same personnel policies and work rules, wear the same uniforms and operate the same company vans. Accordingly, these factors favor a multi-site unit. However, there is no evidence that these skills and working conditions differ from those of the Employer's employees in all of its other Florida facilities - facilities which the Employer does not urge should be included in the unit. Moreover, I note that such factors are apparently accorded little weight in cases involving widely separated facilities where the employees are subject to direct supervision from a local manager with significant authority, as is the situation in this case. See, e.g., *Red Lobster*, supra; *Carter Hawley Hale Stores*, 273 NLRB 621 (1984).

Geographic Distance

The employees at the Pompano Beach facility service a specific geographical area of Monroe, Miami-Dade and Broward counties, which serves to support the single facility presumption that Pompano Beach is an appropriate unit. Moreover, the distances of approximately 37 miles from Pompano Beach to West Palm Beach and 92 miles from Pompano Beach to Port St. Lucie facility are significant and support the finding that the presumptive appropriateness of the single-facility unit has not been rebutted. *Ohio Valley Supermarkets, Inc.*, 323 NLRB 665 (1997).

Bargaining History

There is no bargaining history at the Employer's Pompano Beach, West Palm Beach and Port St. Lucie facilities. Nevertheless, the Employer argues that, because labor organizations represent some of its employees in multi-site bargaining units at other Employer facilities throughout the United States, the Board should find that such bargaining history serves to help rebut the single-facility presumption. However, labor organizations represent employees of the Employer in more single-site bargaining units

(18) than multi-site bargaining, units (14), and in any case no significant bargaining history can be gleaned from the tidbits of evidence regarding bargaining history at other locations. More importantly, the evidence of bargaining history at other locations is only marginally relevant. The Board has held that, although an employer has a history of multi-site bargaining units at all of its other locations, it does not serve to rebut the single facility presumption. *Cargill, Inc.*, supra. More relevant is the fact that there is no bargaining history at any of the facilities involved in the current proceeding. Moreover, it is significant that no labor organization seeks to represent the petitioned-for employees on a broader basis. *Bowie Hall Trucking*, 290 NLRB 41 (1988).

Presumption Favoring a Single-Facility Unit has not been Rebutted

The cases relied on by the Employer in asserting that the presumption of a single-facility unit has been rebutted are distinguishable on their facts from the instant situation, primarily because in those cases there was significantly greater interchange and/or less local autonomy than in the instant case. See, for example, *Waste Management Northwest*, 331 NLRB 309 (2000) (lack of local autonomy at the second facility where there was no permanent supervisor and employees interacted and coordinated deliveries and pickups to customers); *Dayton Transport Corp.*, 270 NLRB 1114 (1984) (final authority on all personnel decisions centralized; over 400 instances of interchange among three facilities in one year); *Novato Disposal Services*, 328 NLRB 820 (1999) (common supervision of employees at all locations; frequent permanent and temporary interchange); *R&D Trucking*, 327 NLRB 531 (1999) (common supervisionno local manager at one of the facilities; frequent interchange-12 instances a month among 10 employees); *Big Y Foods, Inc.*, 238 NLRB 860 (1978) (significant central control of day-to-day labor relations including hiring, discipline, and grievance handling); *Dan's Star Market Co.*, 172 NLRB 1333 (1968) (division managers directly supervised departments in store; half of numerous temporary transfers involved store sought by petitioner).

Drafters. Project Coordinators and Field Support Specialists

The Employer seeks to include, in the bargaining unit found appropriate herein, two drafters, one installation field services coordinator (commonly known as project coordinator) and two field support specialists employed at the Pompano Beach facility. The Employer contends that those employees share a community of interest with the installation and service technicians, whereas the Petitioner asserts that such a community of interest does not exist.¹³

Section 9(b) of the Act provides that "[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof." In this regard, the cornerstone of the Board's policies on appropriateness of bargaining units is the community of interest doctrine, which operates "to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment." 15 NLRB Ann. Rep. 39 (1950). "Such a mutuality of interest serves to assure the coherence among employees necessary for efficient collective bargaining and at the same time to prevent a functionally distinct minority group from being submerged in an overly large unit." *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 172-173 (1971).

The fundamental factor in determining an appropriate unit is the community of interest among the employees. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490 (1985). The degree to which employees share a community of interest is measured by a

¹³ Based on my finding that the Employer's Pompano Beach facility is an appropriate single-facility unit, the three employees in the disputed job classifications at the West Palm Beach facility are not part of my analysis.

number of factors, including method of wages; hours of work; employment benefits; nature of supervision; difference in training and skills; interchange or contact with other employees; functional integration; and the extent to which they have historically been a part of a distinct bargaining unit. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). Furthermore, it is well established that, in deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996).

I find that the job classifications of drafters, project coordinators and field support specialists do not share a community of interest with the petitioned-for installation and service technicians and should not be included in the bargaining unit found appropriate. The most compelling factors in reaching this determination are the differences in skills, functions and working conditions, the lack of day-to-day interchange, and the minimal degree of interaction between the technicians and the drafters, project coordinators and field support specialists. In addition, the lack of bargaining history favors the Petitioner's position that the installation and service technicians constitute an appropriate unit. *Mercy Center for Health Care Services*, 227 NLRB 1814 (1977).

The drafters, project coordinator and field support specialists share certain differences from the installation and service technicians. In particular, unlike the technicians, the employees in the three disputed job classifications are assigned computers to perform their job duties, have designated cubicles in an office work area, do not wear uniforms, are not assigned company vehicles, do not attend the same employee training sessions, and are required to have an undergraduate college degree as part of their job.¹⁴ While there is common supervision over a portion of the unit employees (the commercial installation technicians) and the employees in the disputed classifications, and functional integration between the jobs performed by the employees in the disputed classifications and those performed by the commercial installation technicians, the tasks performed by the employees in the disputed classifications require skills that are significantly distinct from the skills shared by the commercial installation technicians and the other petitioned-for employees.¹⁵

Drafters

Drafters have substantially different skills, functions and working conditions than the installation and service technicians. In addition to the common differences previously mentioned, unlike the technicians, drafters are required to take computer assisted design (CAD) training. Although one installation technician was a drafter in the past, he was transferred to the technician position based on his own request, and technicians are not required to take CAD training. There is no evidence that technicians are required to possess other drafting skills. There is no evidence of day-to-day interchange between drafters and technicians. In addition, drafters spend 85 to 90 percent of their work time in their office cubicles designing plans and drawings of installation systems and work closely with the project coordinator, whereas installation and service technicians spend most of their work time in the field performing installation and service work at customers' homes and business locations, so there is minimal

14 After the hearing closed, the Employer filed a motion to reopen the record for the purpose of submitting evidence on the question of whether the employees in the three disputed job classifications possess college degrees. The Employer argues that the level of education the employee actually has is the material fact, rather than the education requirement as reflected in a job profile or description. The Employer's motion to reopen the record for its stated purpose is hereby denied. The Employer does not propose to offer newly acquired evidence which was not available during the course of the hearing. Moreover, assuming for the sake of argument that none of the employees in the three disputed job classifications actually possesses a college degree, that fact would not change my decision herein that there is not a community of interest between those employees and the technicians.

15 The fact that one of the drafters assigned to the Pompano Beach facility works at the Employer's Miramar, Florida sales office supports my finding that drafters have different working conditions and do not share a community of interest with the installation and service technicians.

interaction between the drafters and the technicians. Although drafters may attend some meetings with commercial installation technicians and sometimes answer their questions concerning the plan designs, the record does not reflect how often this occurs. Although drafters are paid an hourly wage rate in the same general range as the installation and service technicians and enjoy the same benefits, this is also of limited significance in view of the above-described differences in working conditions, functions and skills between the technicians and drafters.

Applying the traditional factors of a community of interest analysis, based on the above-described evidence, I find that the drafters do not share a sufficient community of interest with the installation and service technicians and that they should be excluded from the unit found appropriate.

Project Coordinator

In addition to the common differences from technicians previously mentioned, the project coordinator also possesses significantly different skills, functions and working conditions than the installation and service technicians. The record evidence does not establish that the project coordinator has significant contact or interchange with the petitioned-for employees. Although the project coordinator spends approximately 70 percent of his work time on installation sites, where commercial installation technicians also work, and there is some evidence that he attends meetings with installers, performs some inspection work and sometimes assists with installation duties, the project coordinator primarily interacts with customers and the Employer's drafter. His primary role is to manage the commercial installations, supervising job progress, and he is mainly focused on assisting managers with scheduling issues.

The fact that a former project coordinator who is currently a field support specialist once was a technician fails to establish significant interchange or transfer between technicians and the project coordinator classification, which is now occupied by a different individual. In addition, the fact that the project coordinator is paid an hourly wage in the same general range as the technicians and shares the same benefits is of limited significance in view of the above-described differences in working conditions, functions and skills between the technicians and project coordinator. Accordingly, I find that the project coordinator does not share a sufficient community of interest with the installation and service technicians and that he should be excluded from the unit found appropriate.

Field Support Specialists

The field support specialists also have significantly different skills, functions and working conditions than the installation and service technicians. In addition to the common differences previously mentioned, the field support specialists are salaried employees paid on a yearly basis. Although the Employer contends that the total amount of annual compensation between the field support specialists and the petitioned-for employees is similar, technicians are paid an hourly wage, whereas field support specialists are salaried. Although the field support specialists enjoy the same benefits as the installation and service technicians, the record shows that all employees share common benefits pursuant to the Employer's uniform policies and handbook in the State of Florida.

There is insufficient evidence to establish significant interchange or interaction between field support specialists and the installation and service technicians. Although the field support specialists spend approximately 75 percent of their work time on commercial installation sites, walk around the work site with the installation technicians during the initial meeting of the job, speak to installers if there are any issues with acquiring permits for the job, and interact with service technicians if a national account is referred back for service, the primary function of field support specialists is to produce paperwork for the national account managers to sell projects and create jobs. The record does not reflect how much work time of field support specialists is spent with installation and service technicians. There is no evidence that the field support specialists work with the tools used by the installation and service technicians.

Although there is evidence that one of the field support specialists was formerly a project coordinator and prior to that time worked as a technician, there is no evidence that field support specialists are required to possess the skills of a technician.

Based on these facts, I find that the weight of the evidence supports a finding that the field support specialists do not share a sufficient community of interest with the installation and service technicians, and therefore I conclude that field support specialists should be excluded from the appropriate bargaining unit found herein. **SUMMARY**

I find that the Employer has not rebutted the presumption that the petitioned-for single facility unit is appropriate. I also find that the unit sought by the Petitioner constitutes an appropriate unit. The record establishes that the following factors: 1) 'local autonomy (day-to-day supervision); 2) lack of significant employee interchange, transfers or interaction; 3) geographical distance between the multi-site facilities; and 4) lack of bargaining history among the petitioned-for employees, favor the finding that the Petitioner's petitioned-for single facility unit is an appropriate unit for purposes of collective bargaining, and outweigh the evidence of centralized control over labor relations, common employee skills, functions and working conditions, and operational integration.

In addition, I find that the Employer's employees with the job classifications of drafter, installation field services coordinator (project coordinator) and field support specialist do not share a sufficient community of interest with the employees in the petitioned-for job classifications. I find, therefore, in agreement with the Petitioner, that the appropriate unit is a single facility unit consisting of the installation and service technicians at the Employer's Pompano Beach, Florida facility. Accordingly, I shall direct an election therein.

CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:¹⁶

- A. The hearing officer's rulings are free from prejudicial error and are affirmed.
- B. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction in this case.¹⁷
- C. The Petitioner claims to represent certain employees of the Employer.¹⁸
- D. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
- E. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time commercial technicians, high volume (residential and small business) installation technicians and service technicians employed by the Employer at its Pompano Beach, Florida facility.

Excluded: All office clerical employees, operations support employees, drafters, installation field services coordinators (also known as project coordinators), field support specialists, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or

16 Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me as Regional Director. 17 The parties stipulated that the Employer is a Delaware corporation with facilities throughout the United States, including its facilities in Pompano Beach, West Palm Beach and Port St. Lucie, Florida, where it is engaged in the sale, installation and service of security systems, and that the Employer annually purchases and receives goods and services valued in excess of \$50,000 directly from points located outside the State of Florida.

18 The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

not they wish to be represented for purposes of collective bargaining by: 1) Teamsters, Local Union No. 769, affiliated with the International Brotherhood of Teamsters. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. **Employer to Submit List of Eligible Voters**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that, within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all eligible voters. *North Macon Health Care Facility*, 315 NLRB 359,361 (1994). This list must be sufficiently large type and clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, Florida 33602-5824, on or before **June 5**, 2009. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. Since the list will be made available to all parties to the election, please furnish a total of two (2) copies. If you have any questions, please contact the Regional Office.¹⁹

NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to the date of the election, excluding Saturdays and Sundays. Failure to follow the posting requirement shall be grounds for setting aside the election whenever proper and timely objections are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do

¹⁹ The list may be submitted by facsimile transmission to (813) 228-2874, or electronically, as well as by hard copy. See www.nlr.gov for instructions about electronic filing. Only one copy of the list should be submitted if it is sent electronically or by facsimile.

so estops an employer from filing objections based on the non posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, D.C. 205700001. This request must be received by the Board in Washington by 5:00 p.m., EST/EDT on April 2, 2009. The request may not be filed by facsimile, but may be filed electronically.

20

DATED at Tampa, Florida this 29th day of May 2009.

Rochelle Kentov, Regional Director National Labor Relations Board, Region 12 201 E. Kennedy Blvd., Suite 530 Tampa, Florida 33602-5824

20 If the request for review is filed electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished before midnight in the time zone of the receiving office on the due date (midnight is considered the beginning of a new day). Filings accomplished by any other means, e.g., mail or personal delivery still must be received by the Board in Washington by 5:00 p.m., EST/EDT on the due date.

In order to file a request for review electronically, access the Agency's website at <http://www.nlr.gov>, click on E-Gov, then click on the E-Filing link on the pull-down menu. Click on the "File Documents" button under "Board/Office of the Executive Secretary" and then follow the directions. The responsibility for the receipt of the request for review rests exclusively upon the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.